

United States District Court

EASTERN DISTRICT OF OKLAHOMA

In the Matter of the Search of:

The residence, vehicles, outbuildings, and any appurtenances within the curtilage of 305 E Fillmore Avenue, McAlester, Oklahoma, 74501

Case No. 22-MJ-251-KEW

APPLICATION FOR SEARCH WARRANT

I, Sterling Juarez, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that there is now concealed on the following person or property located in the EASTERN District of OKLAHOMA (*identify the person or describe property to be searched and give its location*):

SEE ATTACHMENT "A"

The person or property to be searched, described above, is believed to conceal (*identify the person or describe the property to be seized*):

SEE ATTACHMENT "B"

The basis for the search under Fed. R. Crim. P. 41(c) is (*check one or more*):

- ☒ evidence of a crime;
- ☒ contraband, fruits of crime, or other items illegally possessed;
- ☐ property designed for use, intended for use, or used in committing a crime;
- ☐ a person to be arrested or a person who is unlawfully restrained.

The search is related to a violation of Title 18, United States Code, Section(s) 922(g), 922(j), 922(u), and 933(a) and the application is based on these facts:

- ☒ Continued on the attached sheet.

SEE ATTACHED AFFIDAVIT OF ATF SA STERLING JUAREZ

☐ Delayed notice of _____ days (give exact ending date if more than 30 days: _____) is requested under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet.

Sworn on
Date: September 9, 2022

City and state: Muskogee, Oklahoma



STERLIN JUAREZ
SPECIAL AGENT
BUREAU OF ALCOHOL, TOBACCO,
FIREARMS, AND EXPLOSIVES

[Signature]

Judge's signature

KIMBERLY E. WEST
UNITED STATES MAGISTRATE JUDGE

Printed name and title

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA**

AFFIDAVIT

I, Sterling Juarez, a Special Agent with the Bureau of Alcohol, Tobacco, Firearms, and Explosives, having been duly sworn, do hereby depose and state as follows:

INTRODUCTION

1. I am a Special Agent with the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). I have been so employed since July 2017. I am currently assigned to the ATF's Tulsa, Oklahoma office. I am an investigative or law enforcement officer of the United States within the meaning of Title 18, United States Code, Section 2510 (7), that is, an officer of the United States empowered by law to conduct investigations and make arrests upon violations of the offenses enumerated in Title 18, United States Code, Section 2516. My primary duties and responsibilities with the ATF are conducting investigations of federal firearms violations and other federal violations.

2. I am a graduate of the Criminal Investigator Training Program at the Federal Law Enforcement Training Center as well as the ATF Special Agent Basic Training Academy. During these courses of study, I received training in the investigation of federal firearm and explosive violations. I have been a soldier in the National Guard since September 2006, as a Combat Engineer working with U.S., foreign, and improvised explosives. I have a Bachelor of Science degree in Political Science. As an ATF Special Agent, I assist in conducting investigations into the unlawful possession of firearms. Through training, investigations, and experience, I have taken part in cases relating to the trafficking of firearms, the use and possession of firearms by persons prohibited by law, and the possession of illegal firearms. I am familiar with and have participated in various methods of investigations, including, but not limited to: electronic surveillance,

physical surveillance, interviewing and general questioning of witnesses, use of confidential informants, use of cooperating witnesses, use of toll records, and subscribers information. I have also debriefed confidential informants and cooperating witnesses regarding the habits and practices of people engaged in the illegal trafficking of firearms. Furthermore, I have conducted and participated in numerous investigations to include: crime scene investigations, collection of evidence, interviews, and the execution of search warrants.

3. Through my training, experience, and interaction with experienced special agents, Task Force Officers (TFOs), and other investigators, I have become familiar with the illegal use and possession of firearms and/or controlled substances in Oklahoma. As part of my official duties, I have conducted arrests of persons engaged in the illegal use and possession of firearms and/or controlled substances. I have also executed search warrants of homes and property of persons engaged in the illegal use and possession of firearms and/or controlled substances. Moreover, I have interviewed persons involved in the illegal use and possession of firearms and/or controlled substances and debriefed confidential sources and cooperating defendants regarding the habits and practices of people engaged in the illegal use and possession of firearms and/or controlled substances.

4. All reference herein to any experience refers to experience gained through training, conducting firearms and controlled substances investigations, and participating in those investigations with other experienced investigators, as well as conversations with other law enforcement officers. The details and information stated herein are based on my training, experience, and personal knowledge, as well as a compilation of facts and events investigated by me and other law enforcement officers who investigated and confirmed their veracity or oversaw their developments. I have drafted this affidavit to the limited purpose of establishing probable

cause for certain violations of law. Therefore, I have not included all of the facts of this investigation.

5. For the reasons set forth below, I respectfully submit that there is probable cause to believe that the property, vehicles, outbuildings, and any appurtenances within the curtilage of the residence that are the subject of this search warrant includes evidence of the following offenses: 18 U.S.C. § 922(g) – Felon in Possession of a Firearm, 18 U.S.C. § 922(j) – Possession of a Stolen Firearm, and 18 U.S.C. § 922(u) – Unlawfully Stealing or Taking Away Firearms from the Business Inventory of a Federal Firearms Licensee, 18 U.S.C. § 933(a) – Trafficking in Firearms¹.

JURISDICTION

6. This affidavit requests a search warrant for the residence, vehicles, outbuildings, and any appurtenances within the curtilage of the residence located at 305 E Fillmore Avenue, McAlester, Oklahoma, 74501 (hereinafter referred to as the TARGET RESIDENCE). The TARGET RESIDENCE is located in Pittsburg County, Oklahoma, within the Eastern District of Oklahoma.

FACTS IN SUPPORT OF PROBABLE CAUSE

7. Early on the morning of July 29, 2022, there was a burglary at McAlester Tactical Supply (hereinafter “MTS”) at 601 N Main Street in McAlester, Oklahoma, within the Eastern District of Oklahoma. The business’s Federal Firearms License number is 5-73-121-01-5A-04365. Cameras inside the business recorded a white male entering the sales floor from a rear supply closet, stealing an as-yet undetermined number of firearms, and leaving through the same supply

¹ The crime of Trafficking in Firearms, in violation of 18 U.S.C. § 933, is a new federal criminal statute that was recently enacted into law by the President as part of the Bipartisan Safer Communities Act, PL 117-159, Div. A, Title II, § 12004(a)(1), June 25, 2022, 136 Stat. 1327.

closet. Shortly after leaving, a fire started from the same doorway. The ATF provided investigative support at the scene and in the subsequent criminal investigation.

8. During the course of the investigation, ATF set up a tip line and reward. One of the calls into the tip line was that a Carl Ray HOLLAND was responsible for the robbery. HOLLAND has previously been convicted of several felonies and is therefore prohibited from possessing firearms and/or ammunition.

9. On August 1, 2022, ATF personnel located HOLLAND at 517 Adams Avenue, McAlester, Oklahoma, and spoke with him. HOLLAND gave verbal consent to search the residence. ATF agents observed multiple firearms in the freezer section of a refrigerator, and detained HOLLAND.

10. ATF agents interviewed HOLLAND, who admitted that the firearms were from the burglary of MTS, but said that they were “forced on [him]” the day after the burglary.

11. ATF agents also obtained and executed a search warrant for HOLLAND’s residence at 517 Adams Avenue on the same date. During the search warrant, a total of eight (8) firearms were seized. Those firearms were later shown to have come from the burglary of MTS based on a review of their serial numbers.

12. During his interview, HOLLAND named two (2) individuals, Jerry Lee “JJ” BENJAMIN and Brett WHINERY. WHINERY and BENJAMIN are brothers and bear a family resemblance to each other.

13. ATF agents interviewed both BENJAMIN and WHINERY on August 3, 2022.

14. WHINERY was arrested after 6:00 pm on July 31, 2022, in Oklahoma City. WHINERY reported to the police in Oklahoma City that, among other things, he had been robbed at gunpoint of his clothes and van by several individuals, some of whom were black. According

to the police report of WHINERY's arrest in Oklahoma City, he also reported that one of the robbers stated that "...if [WHINERY] wasn't being honest about what was in [WHINERY's] vehicle he would kill [WHINERY]." WHINERY said that he later escaped and was apprehended by the police. According to the police report, WHINERY said that his vehicle was a green Chevy van from the late nineties.

15. WHINERY told ATF Agents that he had left the McAlester area to go to Oklahoma City on either Wednesday or Thursday July 27-28, 2022. When asked where he had gone to, WHINERY paused for approximately eight (8) seconds, then said "I'm not trying to lie, I'm just trying to think of a f***ing name."

16. JJ BENJAMIN declined to directly acknowledge that WHINERY was involved in the burglary, but, when shown video from inside the business during the burglary, said "That looks like me." When asked, BENJAMIN said that it wasn't him in the video and when asked if it was WHINERY, declined to respond. Later in the interview, and not in the context of identifying the individual on video, agents asked BENJAMIN if he knew where the firearms from the burglary are. BENJAMIN responded, "My brother wouldn't tell me."

17. BENJAMIN further said that he had last seen WHINERY on Friday night, which would have been later on the same day of the burglary. BENJAMIN later said that WHINERY told him that WHINERY was going to work on Saturday July 30, 2022, and BENJAMIN had not seen WHINERY since. BENJAMIN was unable to locate the communications he had had with WHINERY and said that it was possible he had communicated with WHINERY on his wife's phone. BENJAMIN also said that WHINERY had been trying to purchase a green van from a family member in the past.

18. BENJAMIN stated he obtained two (2) firearms from HOLLAND but moved them just prior to ATF contacting him at his residence on August 1, 2022. BENJAMIN stated HOLLAND assured him the guns weren't stolen, even though Agents didn't ask him if they were stolen. He said he bought an SKS rifle for \$250.00 and a .380acp caliber pistol. BENJAMIN explained that the SKS was moved to his father's workshop and his friend, "PJ, has the .380acp pistol." He explained that he gave PJ the .380 pistol since WHINERY previously stole a different gun from PJ.

19. BENJAMIN additionally gave a different account of WHINERY's arrest in Oklahoma City, which BENJAMIN said he had heard from BENJAMIN and WHINERY's mother.

20. ATF agents contacted M.B., the mother of both BENJAMIN and WHINERY. M.B. said that she had spoken to WHINERY on either Sunday, July 31, 2022, or Monday, August 1, 2022, following his arrest. M.B. said that WHINERY had told her that he had been robbed of drugs by members of the Aryan Brotherhood in Oklahoma City. This is the same version of events related to ATF agents by BENJAMIN in his interview.

21. ATF Agents obtained the jail call WHINERY made to M.B. at phone number (918) 470-4755 from the Oklahoma County Jail on August 1, 2022. He stated on Sunday, July 31, 2022, he was held at gun point, then robbed and pistol whipped. He explained that they stole everything, including his van. M.B. said "Okay, good. Who done that?" WHINERY replied, "...this fucking dude I met. I was trying to get money all day yesterday...he was just playing me around... I didn't have no gas to get home... so I was just... you know what I mean? ... ended up getting fucking robbed. He had two people holding me up at gunpoint, in the house, butt ass naked. He was out there robbing my van, trying to find... and it had some stuff hidden... He come back and said

‘Where’s the stuff?’ I said man it’s in the fucking side panels... He was like ‘tell me where it’s fuckin at.’ And I was like man I just fuckin did. And he fuckin pistol whipped me in my head... gashed the fuck out of my head, blood everywhere... Anyways, he was like ‘If I find something that you didn’t tell me about, I’m fucking killing you.’ So he went back out there and started looking in my van some more so I got fuckin nervous so I fuckin, first chance I got, I fuckin ran. I uh,... took the stick out the back door, took off running...” He then told M.B. that he gave the police a fake name. He jumped out of the ambulance and hid in the trash can for a couple of hours. He went to get out so he could call someone and go home but the police were waiting right by the trash can. M.B. asked WHINERY if she needed to have “Nicole” report that the van was stolen. He stated, “no, they don’t know it’s stolen... I would leave that alone.” M.B. replied “Okay, alright.”

22. On August 6, 2022, ATF received an anonymous tip on the tip line that on July 30, 2022, the tipster was at B.B. residence located at 1752 Blackberry Road, Indianola, OK 74442 from approximately 1900 to 0200 hours on July 31, 2022. B.B. is the stepfather of WHINERY and married to M.B. During the course of the night, B.B. and the tipster were in B.B.’s workshop alone. B.B. told the tipster that his stepson, WHINERY, conducted the burglary at McAlester Tactical Supply. After conducting the burglary, WHINERY called BENJAMIN, to pick him up from the burglary location. B.B. further explained that BENJAMIN picked WHINERY up and came to B.B.’s residence located at 1752 Blackberry Road. B.B. was awoken by the brothers’ arrival. B.B. stated that he saw approximately fifty (50) firearms and told them to “get that shit out of here.” BENJAMIN and WHINERY left the residence with the firearms. B.B. stated there were all different types of firearms and said there was “a shit ton of them.” B.B. was visibly upset

when discussing this with the tipster. M.B. came out to the workshop and asked what they were discussing. The tipster deflected the question and M.B. left the workshop.

23. The tipster also saw BENJAMIN at the address on this same night briefly coming from the camper trailer. BENJAMIN spoke briefly with the tipster.

24. The tipster confirmed there are surveillance cameras at the residence. B.B. told the tipster he was upset because he had to go back and erase the video showing BENJAMIN and WHINERY coming to the residence after the burglary with the stolen firearms. The tipster was confident that M.B. told B.B. to erase the video.

25. WHINERY is a convicted felon having been convicted of Possession of a Firearm After Former Felony Conviction in Pittsburgh County Case CF-16-278 and Embezzlement in Rogers County Case CF-15-739. Therefore, he is not permitted to possess firearms and/or ammunition.

26. On August 8, 2022, ATF executed a federal search warrant at 1752 Blackberry Road, Indianola, Oklahoma, the residence of B.B., and recovered a rifle in the workshop matching the description that BENJAMIN provided agents during his previous interview. Agents also recovered an Amazon Blink surveillance camera system from the main residence, including four individual cameras found on both the exterior and interior of the house. In addition, one Amazon Blink module was recovered inside of the main residence.

27. On August 31, 2022, an ATF Agent received a tip from Confidential Source 1 (hereinafter "CS-1"), stating firearms stolen from MTS were located at a residence belonging to "Joe" on E. Comanche in McAlester, OK. Agents called and spoke to CS-1 who stated on August 30, 2022, CS-1 saw a male come to the house in an older, green van. The male then unloaded several heavy looking bags from the van and carried them into the house. The male did not return

with anything from the house to the van. CS-1 also stated there were surveillance cameras at the residence and that “Joe Budds” lives there.

28. CS-1 told ATF Agents that WHINERY stated the firearms were located at 1605 E. Comanche Ave., either under the porch or in the basement. Agents sent CS1 a screenshot (**see Attachment C**) of the front of 1605 E. Comanche Avenue, McAlester, OK, which was taken from Google Maps. The screenshot from Google Maps indicated an image capture date of May 2022. CS-1 replied with a “thumb’s up” reaction on the messaging application. Agents called CS1 back and asked if they were confirming that the photo was in fact the house that they saw the green van and where WHINERY stated the firearms were hidden. CS1 confirmed it was the correct house.

29. ATF Agents would confirm in a later search warrant that Joseph Ali BUDDS resided at 1605 E Comanche Ave, McAlester, Oklahoma.

30. CS-1 told Agents they had previously seen the same green van several times at J.S.’s house on A Street, which is directly across the railroad tracks behind MTS. Agents had previously interviewed J.S., who confirmed WHINERY had been at his house in the past. WHINERY spoke about being in a van in paragraph 20. WHINERY also reported to police in Oklahoma City that his vehicle was an older model, green Chevy van.

31. On August 31, 2022, ATF Agents received another tip on the tip line stating this tipster had information about the person who committed the MTS burglary on July 29, 2022, and the possible whereabouts of some of the guns that were stolen. ATF agents called the number left by the tipster and spoke to Confidential Source 2 (hereinafter “CS-2”). CS-2 stated that WHINERY approached CS-2 for a ride on August 30, 2022. CS-2 agreed to give WHINERY a ride. During the ride, WHINERY explained to CS-2 that he had previously sold guns to BUDDS to make some money. WHINERY asked CS-2 if CS-2 was interested in robbing BUDDS of the

guns. CS-2 asked what guns they were, and WHINERY stated they were from the burglary in town, referring to the MTS burglary. WHINERY advised CS-2 the guns were in the garage or underneath the house.

32. CS-2 verbally confirmed that BUDDS lived at the residence by viewing a screenshot sent from Agents of the front of 1605 E. Comanche Avenue, McAlester, OK 74501 obtained from Google Maps. This was the same screenshot shown to and identified by CS-1 as BUDDS' house.

33. Agents asked CS-2 about WHINERY and the green van. CS-2 confirmed a family member of WHINERY's owns a green van. BENJAMIN stated previously that WHINERY was trying to purchase a van from his cousin. CS-2 stated WHINERY has a cousin, who is more like a sister, N.K., who does have a green van registered to her. In paragraph 20, WHINERY mentioned N.K. to M.B. in regard to not reporting the green van stolen after he was arrested in Oklahoma City.

34. CS-2 also saw surveillance video from the night of the MTS burglary. CS-2 was very confident that the person seen on the surveillance video was WHINERY, as he was wearing the same clothing on August 30, 2022, specifically the shirt and hat. CS-2 pointed out the distinct characteristic of a logo of a tooth across the chest of WHINERY's hoodie that could only be seen in certain lighting on the surveillance video from the burglary. Agents reviewed the surveillance video again and confirmed the distinct logo. CS-2 also stated WHINERY was wearing the same camouflage hat on August 30, 2022, that was seen in the surveillance video. CS-2 further explained that WHINERY wears the hat all the time.

35. CS-2 also provided Agents with screen captures of Facebook messages from WHINERY and BENJAMIN. The screen captures displayed a concern from WHINERY and

BENJAMIN that someone had given information against them to law enforcement. They accused CS2 of being that person. Based on my training and experience, I know that when suspects fear law enforcement may be closing in on the discovery of evidence, it makes it more likely that suspects will move and/or conceal relevant evidence to the investigation.

36. On September 1, 2022, ATF Agents served a federal search warrant at 1605 E Comanche Ave, the residence of BUDDS, for—among other things—firearms. BUDDS was detained and read his Miranda warnings. In an interview with Agents, BUDDS acknowledged purchasing five (5) firearms from WHINERY for eight-hundred dollars (\$800) on July 29, 2022. BUDDS showed Agents on his phone a cash withdrawal from his bank account on the same date for nine-hundred dollars (\$900). BUDDS said that he had subsequently heard about the burglary and fire of MTS from a friend, deduced that the firearms were from the burglary, and hid them in the trunk of a car at his friend's house. BUDDS led Agents to the house where the car was located. The owner of the car gave verbal consent over the phone for the Agents to recover the firearms. Agents recovered five (5) firearms and one (1) suppressor from the trunk of the car and shop where the car was parked. Serial numbers from all the firearms and the suppressor matched serial numbers of items stolen from MTS.

37. Without having referenced his phone and without mentioning the address, BUDDS described the property where he had gone on July 29, 2022, to look at the firearms WHINERY was offering to sell. BUDDS said he went to the house, saw approximately ten (10) firearms leaned up against the wall and/or laying on the floor, picked out the five he wanted to buy, withdrew money from the bank, and returned to purchase the five firearms he had picked out for eight-hundred dollars (\$800). BUDDS' description of the house allowed agents to find the property on Google Maps at BUDDS' direction. BUDDS further identified the front of the house

in Google Streetview. The address of the house identified by BUDDS on Google Maps was 305 E Fillmore Ave, McAlester, OK.

38. BUDDS gave consent for ATF Agents to search his cell phone. In reviewing BUDDS' cell phone after the interview, Agents observed a text conversation with a phone number not saved in BUDDS' contacts. WHINERY had previously identified that same phone number to ATF Agents as his phone number. On July 29, 2022, text messages from this phone number gave the following address to BUDDS: "305 e Filmore McAlester ok 74501" [sic]. The next message reads in part: "I'm leaving for a couple of days to get away I'll let u know before I leave tho" [sic]. This is consistent with WHINERY's arrest in Oklahoma City the following Sunday July 31, 2022.

39. A search of law enforcement and civilian records shows that the resident of record at 305 E Fillmore is Kenny Dale CUNNINGHAM, who is a previously convicted felon. CUNNINGHAM is therefore prohibited from possessing firearms and/or ammunition. The license plate of a truck parked in front of the house is also registered to CUNNINGHAM.

40. Based on my training and experience, I know that stolen firearms are stored in various locations to hide from law enforcement. They are often kept hidden from plain sight to conceal their location. Suspects commonly use outbuildings, such as storage sheds or garages, to store stolen firearms near their residence. Additionally, suspects may store stolen firearms in vehicles or trailers near their residence so that it will be easier to quickly move and conceal the location of the stolen firearms. Accordingly, in my training and experience it is possible or even likely that such evidence may exist within the TARGET RESIDENCE, outbuildings, vehicles, and any appurtenances within the curtilage of the TARGET RESIDENCE.

41. Based on my training and experience, I know that firearms owners rarely own firearms alone; they often also own firearms accessories such as cases, attachments, and cleaning

supplies, as well as spare or additional magazines and ammunition. I know that these accessories and other items are often stored alongside the firearms. Accordingly, in my training and experience it is possible or even likely that such accessories and supplies may exist within the TARGET RESIDENCE, outbuildings, vehicles, and any appurtenances within the curtilage of the TARGET RESIDENCE.

42. Based on my training and experience, and from discussions with other experienced investigators and law enforcement officers, I know that individuals engaged in criminal activity often use cellular devices to facilitate communicate with others regarding their activities. Accordingly, in my training and experience it is possible or even likely that such cellular devices may exist within the TARGET RESIDENCE

CONCLUSION

43. Based upon my training and experience, I believe that probable cause exists to believe there has been violations of 18 U.S.C. § 922(g) – Felon in Possession of a Firearm, 18 U.S.C. § 922(j) – Possession of a Stolen Firearm, and 18 U.S.C. § 922(u) – Unlawfully Stealing or Taking Away Firearms from the Business Inventory of a Federal Firearms Licensee, 18 U.S.C. § 933(a) – Trafficking in Firearms.

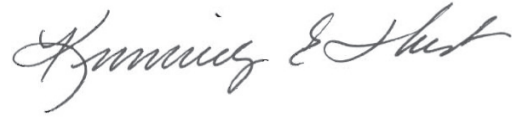
44. I respectfully request that this Court issue a search warrant for the TARGET RESIDENCE, located at 305 E Fillmore Avenue, McAlester, Oklahoma, in Pittsburg County, Oklahoma, within the Eastern District of Oklahoma, vehicles, outbuildings, and any appurtenances within the curtilage of the residence, which is more fully described in **Attachment A**, as well as authorize the search of the aforementioned property for the items described in **Attachment B**.



Sterling Juarez
Special Agent

Bureau of Alcohol, Tobacco, Firearms, and
Explosives

SWORN on this 9th day of September, 2022.

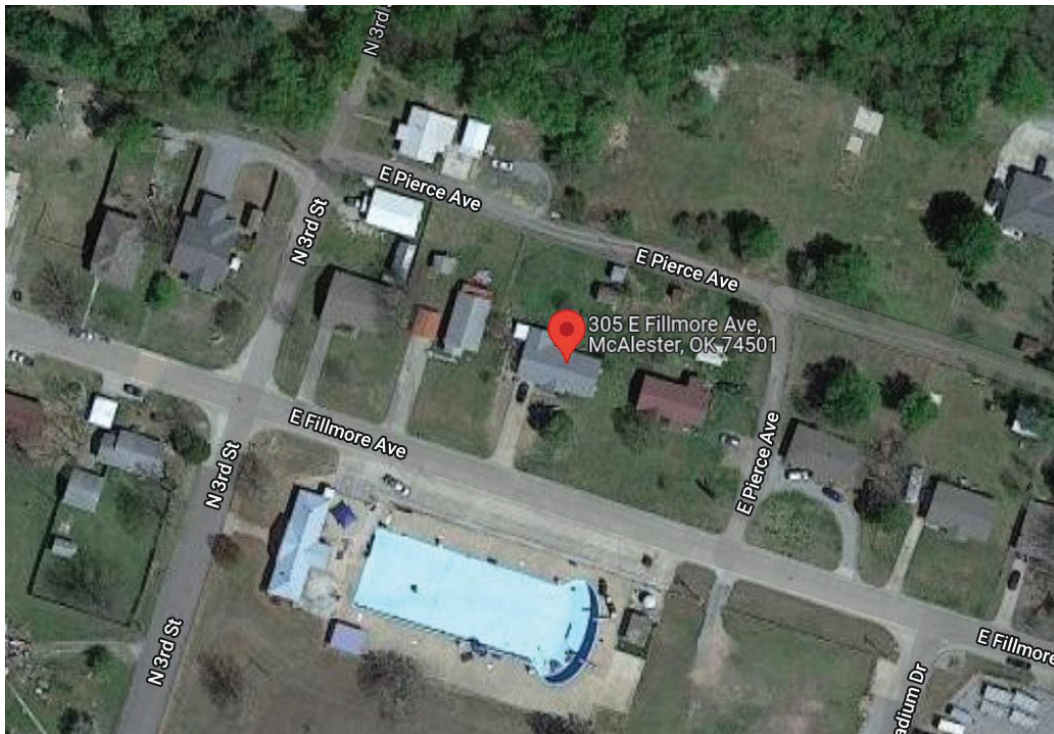
A handwritten signature in cursive script, appearing to read "Kimmie E. Hunt".

United States Magistrate Judge

ATTACHMENT A

DESCRIPTION OF THE PROPERTY TO BE SEARCHED

305 E Fillmore Avenue, McAlester, Oklahoma 74501, is a single-family dwelling residence with a carport on the left side of the house when viewed from the street. The house number, 305, is posted next to the front door. This search warrant seeks to search that residence, vehicles, outbuildings, and any appurtenances within the curtilage of the residence.







ATTACHMENT B

DESCRIPTION OF ITEMS TO BE SEIZED

1. Any firearms, ammunition, and firearms accessories that were stolen from the McAlester Tactical Supply on July 29, 2022.
2. Indicia of residence/ownership of the residence located at 305 E Fillmore Avenue, McAlester, Oklahoma 74501.
3. Any cellular devices.
4. Any documents and photographs related to the ownership, possession, use, sale, and/or transport of firearms, or ammunition that were stolen from the McAlester Tactical Supply on July 29, 2022.